IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

MFA.No. 898 of 2000()

OPMV.1247/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT:
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1. E.K.KUTTAPPAN,
RESIDING AT ETTUMUNNA HOUSE,
KALLIDUKKU, THANIPPADAM,
CHUVANNAMANNU P.O., THRISSUR.

2. MINOR E.K.SUJITH, AGED 10 YEARS,
S/O.1ST PETITIONER, RESIDING WITH 1ST petitioner.

3. MINOR E.K.SUDHESSH, AGED 4 YEARS,
S/O.1ST PETITIONER RESIDING WITH 1ST PETITIONER.

4. MINOR E.K.SUJITHRA, AGED 1 YEAR, D/O.1ST PETITIONER,
RESIDING WITH 1ST PETITIONER.

(MINORS 2 TO 4 REP. BY GUARDIAN & FATHER 1ST APPELLANT).

BY ADV. SRI.JIJO PAUL
SRI.BABU S. NAIR

RESPONDENTS:

THE KERALA STATE ROAD TRANSPORT CORPORATION,
TRIVANDRUM.

BY ADV. SRI.K.PRABHAKARAN,SC KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 7.11.2007, THE COURT ON 07/11/2007 DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.F.A.NO. 898 OF 20O0

Dated this the 7th day of November, 2007

JUDGMENT

Koshy, J.

Wife of the first appellant sustained fatal injuries in a motor accident on 25.1.1992 at 2 p.m. Her husband and two minor children filed application for compensation of Rs.2,55,000/- contending that the accident occurred due to the negligence of the driver of the bus owned by the respondent Kerala State Road Transport Cortporation (K.S.R.T.C). The Tribunal dismissed the case holding that the petition is bad for non-joinder of necessary parties. According to the claimants, on 25.1.1992, while the deceased along with her mother, sister and some others were loading sheaves of paddy in a tempo van parked on the southern side of the Thrissur-Palakkad NH road at Kallidukku, a Fast Passenger bus belonging to the respondent Corporation came from east at an alarming speed ran over a granite stone lying on the road and the granite stone, which was crushed under the bus, broke into pieces and one of the pieces flew of and hit the head of the deceased. She was rushed to the Medical College Hospital and she died enroute. She was 28 years old. She survived

by her husband and three minor children. The Tribunal found that the accident occurred when Fast Passenger bus ran over a granite stone which broke into pieces and one of the pieces few of and hit the head of the deceased, as averred by the claimants. But,according to the Tribunal, granite stone found on the road is due to negligence of P.W.D and P.W.D is not a party to the case. Hence, claimants are not entitled to compensation. PW3 deposed that he saw the Fast Passenger bus passing by and the deceased was lying on the spot with the head injury. PW2 also deposed in the same way. PW2 was also working along with the deceased. Exhibit A1 FI statement given also corroborates the above incident. Even though the poor people were not able to note the number of the vehicle and identify the driver, it was proved beyond doubt that a granite stone was broke into pieces and one of the pieces hit on the head of the deceased because of the Fast Passenger bus drove over the granite. The Fast Passenger bus is owned by the K.S.R.T.C. The Tribunal accepted the above evidence. Now the next question is whether the accident arose out of the use of a motor vehicle ? The Tribunal correctly found as follows:

> "9. In the instant case,t he deceased was loading sheaves of paddy in a tempo van parked on the road side. It was at that time, the Fast Passenger bus belonging to the K.S.R.T.C came from east. It ran over a granite stone which broke into

> pieces and one of the pieces flew of and hit the head of the deceased causing fatal injuries. So, there is nexus between the use of the K.S.R.T.C bus and the injury sustained by the deceased. So, I have no hesitation to hold that the injuries sustained by the deceased was in a road traffic accident arising out of the use of a motor vehicle, thereby attracting the provisions of the Motor Vehicles Act. If any more authorities are necessary, we have the decisions of our Honourable High Court reported in 1995(2) KLT 300 and 1992(2) ILR 833."

2. The next question is whether the K.S.R.T.C is liable to pay compensation. It is true that the accident occurred in 1992, much before Section 163A was framed. According to the Tribunal, the driver of the K.S.R.T.C was negligent, but because of the presence of the granite stone on the road caused the accident and it is for the claimants to get compensation from the P.W.D authorities as the case may be. It was not proved that the driver of the transport vehicle was negligent and therefore compensation under Section 166 cannot be given. We are of the opinion that such contention is not possible on the facts of the case. Learned counsel for the appellants cited a decision of the Supreme Court in ***Kaushnuma Begum v. NewIndia Assurance Co. Ltd.*** ((2001)2 SCC 9) wherein it was stated that based on the principles enunciated in ***Rylands v. Fletcher*** (1861-73) All ER Rep 1), compensation is payable if the accident arose out of use of motor vehicles. Learned counsel for appellants also stated that under Section 165, it is not

necessary to prove the negligence. But in ***Kaushnuma Begum's*** case (supra), immediate cause of the accident was bursting of the front tire which can be stated to be caused due to the negligence of the owner of the vehicle. Apart from the no fault liability, we are of opinion that rashness on the K.S.R.T.C driver is clear in this case as eye witness would state that the Fast Passenger was driven in a rash and negligent manner. Since a granite stone was lying on the road it was burst and hit to the head of the deceased. If the Fast Passenger was driven carefully, the stone would not have been broken and hit on the persons standing on the road side. So, we can find rash and negligent driving of the driver of the K.S.R.T.C bus. Unless the Fast Passenger bus was driven in such a rash and negligent speed, the incident would not have happened. In the above circumstances, considering the theory of res ipsa loquitor, presumption can be arrived that the driver was negligent and vicarious liability is on the employer, the owner of the K.S.R.T.C bus. Hence, we hold that the claimants are entitled to compensation.

3. Now the question is what is the amount of compensation to be paid. According to the claimants, the deceased was employed as a kooli and her monthly income was Rs.1,000/-. The accident occurred in 1992. We fix Rs.900/- as her monthly income and Rs.600/- is fixed as monthly contribution. Taking 15 as the multiplier,

total compensation payable for death is fixed at Rs.90,000/-. For pain and suffering, we award Rs.5,000/- and for loss of consortium, we award Rs.5,000/-. For the loss of love and affection to three minor children, we award Rs.2,500/- each, i.e., Rs.7,500/- and Rs.2,500/- is awarded for transportation and medical expenses. Thus, the claimants will be entitled to Rs.1,10,000/-. Compensation given for non fault liability should be deducted from the above and balance should be deposited with 7% interest from the date of application till the date of deposit. On deposit of the above amount, the compensation should be apportioned equally between the four claimants. The compensation due to first two appellants can be disbursed and the compensation due to appellants 3 and 4 should be deposited in a nationalised bank and they are allowed to withdraw the amount when they become age of 21.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.898 OF 2000

JUDGMENT

7.11.2007